

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harold Rodriguez	Team: Squad #5	CCRB Case #: 201608859	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 10/17/2016 12:19 PM	Location of Incident: Pennsylvania Avenue and Belt Parkway	Precinct: 75	18 Mo. SOL 4/17/2018	EO SOL 4/17/2018	
Date/Time CV Reported Mon, 10/17/2016 3:12 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/21/2016 11:45 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Eric Stclair	06950	934202	HWY 02

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ralph Gaston	16381	936653	HWY 02
2. LT Sherif Nassef	00000	893449	HWY 02

Officer(s)	Allegation	Investigator Recommendation
A.POM Eric Stclair	Force: Police Officer Eric Stclair used physical force against § 87(2)(b)	
B.POM Eric Stclair	Force: Police Officer Eric Stclair struck § 87(2)(b) with a baton.	
C.POM Eric Stclair	Force: Police Officer Eric Stclair eye-gouged § 87(2)(b)	
D.POM Eric Stclair	Discourtesy: Police Officer Eric Stclair spoke discourteously to § 87(2)(b)	
E.POM Eric Stclair	Abuse: Police Officer Eric Stclair threatened § 87(2)(b) with the use of force.	
F.POM Eric Stclair	Abuse: Police Officer Eric Stclair searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

Deputy Inspector Sylvester Ge from Highway 2 filed the following complaint with IAB on behalf of § 87(2)(b) generating log number 16-36806. The complaint was received at the CCRB on October 21, 2016.

On October 17, 2016, at approximately 12:19 p.m., § 87(2)(b) drove on the Belt Parkway in Queens towards JFK Airport. He was pulled over by an officer identified through the investigation as PO Eric St. Clair from Highway 2. Subsequent to the stop, PO St. Clair asked § 87(2)(b) for his license and registration and § 87(2)(b) wanted to know what he was pulled over for. PO St. Clair told § 87(2)(b) he pulled him over for doing 86mph in a 50mph zone. PO St. Clair allegedly tried to grab § 87(2)(b)'s documents through the window and missed. PO St. Clair opened the door to the vehicle and allegedly pushed § 87(2)(b) over onto the passenger seat of the vehicle. PO St. Clair handcuffed § 87(2)(b)'s left hand and could not get his right hand because it was trapped under § 87(2)(b)'s body. PO St. Clair punched § 87(2)(b) in the face multiple times (**Allegation A**) and struck him in the elbow with his expandable baton (**Allegation B**). PO St. Clair also stuck his thumb into § 87(2)(b)'s eye (**Allegation C**) while screaming, "Put your fucking arm behind your back." (**Allegation D**). Since § 87(2)(b) did not give up his arms, PO St. Clair had § 87(2)(b) in an arm bar hold and told him that he would break his arm if he did not give up his arm (**Allegation E**). A civilian tow truck driver opened the passenger door and assisted PO St. Clair with handcuffing § 87(2)(b). Once § 87(2)(b) was removed, PO St. Clair returned to § 87(2)(b)'s vehicle and climbed inside to search it (**Allegation F**) and found marijuana in the center console.

§ 87(2)(b), § 87(2)(g)

This case has two highway videos associated with it.



201608859_20170214_0944_DM.mp4



201608859_20170214_0944A_DM.mp4

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b)'s arrest and lawsuit.
- § 87(2)(b) filed a notice of claim for false arrest, imprisonment, assault, battery. He is claiming 5 million dollars for multiple contusions, bruises, and severe emotional distress and anxiety.
- § 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b) has no other CCRB complaints (Board Review 01).
- PO Eric St. Clair has been a member of service for 13 years and has 12 allegations against him across 5 cases. PO St. Clair has no substantiated allegations against him. His previous CCRB cases contain allegations of him using a baton, physical force and discourtesies.

Findings and Recommendations

Allegations not pleaded

- § 87(2)(b) was pulled over for speeding and received a summons for speeding (Board Review 02). Therefore a car stop allegation was not pleaded.
- PO Gaston could be seen leaning into § 87(2)(b)'s vehicle and grabbed a document from the driver's seat area. The investigation determined that PO St. Clair had obtained the registration to § 87(2)(b)'s vehicle and not the insurance card. PO Gaston reached into the vehicle for the sole purpose of retrieving the insurance card pursuant to a car stop. Therefore a car search allegation was not pleaded against PO Gaston.

Allegation A - Force: Police Officer Eric St. Clair used physical force against § 87(2)(b)

Allegation B – Force: Police Officer Eric St. Clair struck § 87(2)(b) with a baton.

Allegation C – Force: Police Officer Eric St. Clair eye-gouged § 87(2)(b)

Allegation D – Discourtesy: Police Officer Eric St. Clair spoke discourteously to § 87(2)(b)

Allegation E – Abuse of Authority: Police Officer Eric St. Clair threatened § 87(2)(b) with the use of force.

According to § 87(2)(b) he was pulled over by PO St. Clair for speeding but insisted that he was not speeding. § 87(2)(b) had his license and registration on his lap as PO St. Clair spoke to him and asked for the documents. PO St. Clair reached into the driver's side window and grabbed onto the documents but did not get a full grip on them. PO St. Clair told § 87(2)(b) that he was going to arrest him and § 87(2)(b) asked what he would be arrested for. PO St. Clair reached into the window again and grabbed § 87(2)(b)'s wrist but § 87(2)(b) pulled away. PO St. Clair pulled the driver's side door open and pushed § 87(2)(b) over onto the passenger seat. The gearshift was jammed into the right side of § 87(2)(b)'s body. PO St. Clair told § 87(2)(b) to give him his right arm but he could not because it was trapped under his body and PO St. Clair was on top of him. PO St. Clair pulled § 87(2)(b)'s left arm upward and stated he would break his arm if he did not give up his right arm. PO St. Clair extended his expandable baton and struck § 87(2)(b) five or six times in the left elbow. He then closed the baton and punched § 87(2)(b) several times on the left side of his face. PO St. Clair also pushed his thumb into § 87(2)(b)'s left eye. A second officer, PO Ralph Gaston, opened the passenger door and pulled § 87(2)(b) out of the vehicle but he did not recall if he was handcuffed already. § 87(2)(b) was handcuffed at some point and was searched while he leaned against his own vehicle. He was then placed into a marked vehicle and driven to the stationhouse by an unknown officer.

According to PO St. Clair, § 87(2)(b) drove 87mph in a 50mph zone and was therefore pulled over for speeding. PO St. Clair stated that he smelled a strong odor of marijuana emanating from the vehicle as he approached. PO St. Clair asked § 87(2)(b) for his license, registration and proof of insurance approximately four times and § 87(2)(b) refused. § 87(2)(b) stated that he had points on his license and did not believe he was speeding. PO St. Clair told § 87(2)(b) "We can do this one of two ways. We can do it here or we can do it at the precinct." § 87(2)(b) refused again. PO St. Clair opened the driver's side door and told § 87(2)(b) to get out of the car. PO St. Clair stated that § 87(2)(b) was "probably not" under arrest at that moment and that opening the car door was simply a "scare tactic." PO St. Clair grabbed § 87(2)(b)'s left arm and § 87(2)(b) pushed him back. At that point, PO St. Clair considered § 87(2)(b) under arrest for assaulting a police officer. PO St. Clair

grabbed his arm again and § 87(2)(b) responded by lying across the vehicle onto the passenger's seat.

PO St. Clair called for back-up but did not wait because he saw that § 87(2)(b)'s eyes were "a little red" and believed he was intoxicated or under the influence of drugs. In order to prevent § 87(2)(b) from driving off and potentially killing someone in the highway, PO St. Clair climbed into the vehicle to handcuff § 87(2)(b). PO St. Clair handcuffed § 87(2)(b)'s left arm. PO St. Clair told § 87(2)(b) multiple times to give up his arm and § 87(2)(b) replied that he could not. PO St. Clair put § 87(2)(b)'s arm into an arm bar hold and told him that he would "break fucking [his] arm" if he did not give up his right arm. PO St. Clair then warned § 87(2)(b) that he would hit him with his baton if he did not comply. PO St. Clair took his expandable baton out and struck § 87(2)(b) in the right elbow multiple times with the end of the baton. PO St. Clair did not extend the baton but stated that his baton was broken and would not remain closed on its own. PO St. Clair stated that the baton might have extended and hit § 87(2)(b)'s face but he could not confirm. PO St. Clair then stated that § 87(2)(b) turned his body and faced upward but had his right arm tucked under his body. PO St. Clair pushed his thumb into § 87(2)(b)'s eye and § 87(2)(b) screamed and stated that PO St. Clair pushed his eye in and PO St. Clair replied, "You damn fucking right I am." PO St. Clair stated that he pushed his thumb into § 87(2)(b)'s eye to gain compliance. He stated that he learned either at the NYPD academy or in Brazilian Jiu-Jitsu classes that the eye is a "pain point." He believed that if someone was caused pain, they would be more willing to comply. § 87(2)(b) did not give up his arm following the thumb to the eye so PO St. Clair punched him in the face an unknown amount of times to gain compliance. An unidentified tow truck driver opened the passenger door and held § 87(2)(b) down to assist PO St. Clair with the handcuffing. PO St. Clair successfully handcuffed § 87(2)(b)'s right arm. PO Gaston arrived and pulled the now handcuffed § 87(2)(b) out of the vehicle and placed him against the vehicle before being taken to the stationhouse.

Video #1 attached above depicts the incident and is consistent with parts of both statements. The video does not show PO St. Clair reaching into the driver's side window at any point. PO St. Clair does open the driver's side door after § 87(2)(b) argues that he was not speeding. PO St. Clair opened the car and told § 87(2)(b) "Let's go to the precinct." PO St. Clair grabbed § 87(2)(b)'s arm and § 87(2)(b) pulled away, however there is no indication that § 87(2)(b) pushed PO St. Clair. PO St. Clair stated that at the 2:16 mark of the video, the push is visible to him. PO St. Clair grabbed and pulled § 87(2)(b)'s left arm and called for backup. PO § 87(2)(b) climbed into the vehicle and pulled on § 87(2)(b)'s arm again. PO St. Clair is heard screaming, "Put your fucking hand behind your back." multiple times. § 87(2)(b) screams loudly but the actions going on in the vehicle are not depicted in the video. At the 3:00 mark, PO St. Clair stated, "Put your other hand behind your back or I'll break it." § 87(2)(b) continued to scream as PO St. Clair told him multiple times to put his arm behind his back. § 87(2)(b) at one point replied, "How?" and "How would you like me to do that?" PO St. Clair screamed approximately three additional times to put his arm behind his back and § 87(2)(b) replied again, "How? I can't." Three unidentified civilians approached the vehicle and an individual with a bicycle helmet told § 87(2)(b) multiple times to comply and put his hand behind his back. He also stated, "If he tells you to put your hand behind your back then put your hand behind your back." A tow truck pulled up near § 87(2)(b)'s vehicle and the driver opened the passenger side door of § 87(2)(b)'s vehicle. What the driver did was not visible in the video but PO St. Clair was able to successfully handcuff § 87(2)(b)'s

right arm. PO Gaston arrived and pulled § 87(2)(b) out of the passenger seat and placed him against the vehicle, where he remained for the duration of that video. PO St. Clair could be heard off-camera explaining the situation to other officers. An unidentified male was heard stating, “I’m trying to figure out why you collared him.” but PO St. Clair could not provide a clear answer other than § 87(2)(b) was belligerent.

NYPD Departmental trial *CCRB v. Police Officer Juan Rodriguez*, 2014-12197 (Board Review 03) contained a similar incident in which a civilian worked on paperwork in his vehicle. Police officer Juan Rodriguez grabbed and pulled the civilian out of his vehicle and searched him. It was determined at the trial that Police Officer Rodriguez did not operate under the guidelines of Patrol Guide Procedure 221-02 (Board Review 04), which states that officers should only use the minimum necessary force.” The tribunal determined that no use of force was necessary in that particular incident as the officer had no reasonable suspicion that the civilian had committed, or was committing a crime or that the officer’s safety was threatened. The civilian made no verbal threats of force or made any attempts to physically attack the officer. Therefore the officer’s claim that the civilian was “belligerent” was insufficient to justify the use of force.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegation F – Abuse of Authority: Police Officer Eric St. Clair searched the vehicle in which § 87(2)(b)

§ 87(2)(b) admitted during his CCRB statement that he did have a dime bag of marijuana in his vehicle and that he smokes marijuana after he is done with work. He stated that after he was removed from the vehicle and was being searched, he told the surrounding officers that he had marijuana in the vehicle. § 87(2)(b) did not witness any vehicle search after he was put into the police vehicle.

PO St. Clair stated that he smelled marijuana as he approached § 87(2)(b)'s vehicle and saw that § 87(2)(b)'s eyes were red. PO St. Clair stated that he performed a search to lawful arrest and found a small dime bag of marijuana in the center console. He stated that the marijuana was not in plain view and he searched front, back seats and glove compartment to look for weapons and contraband. PO St. Clair stated that § 87(2)(b) admitted later at the stationhouse that he had smoked prior to the car stop.

In the first video associated with this case, PO St. Clair could be heard stating at the 2:17 mark, "Why does your car smell..." but the last few words are inaudible. During the second video, PO St. Clair searched the vehicle and stated upon exiting, "The car reeks of weed." and reveals that he found marijuana in the vehicle.

A strong odor of marijuana emanating from a vehicle provides an officer with probable cause to search the vehicle and its occupants under the automobile exception. People v. Mena, 87 A.D.3d 946 (Sup. Ct., New York City, 2011) (Board Review 06).

It is undisputed that there was marijuana in § 87(2)(b)'s vehicle as he admitted it to the officers when he was arrested. § 87(2)(b), § 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date